**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**PRESENT :**

**THE HONOURABLE MR. JUSTICE THOTTATHIL B.RADHAKRISHNAN**

**THURSDAY, THE 12TH JULY 2007 / 21ST ASHADHA 1929**

**OP.No. 21646 of 1999(B)**
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**PETITIONER:**
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**ANFLORANCE RUSSEL,**
**L.P.S.A., GNANODAYAM L.P.S.,**
**MANNAMKONAM MANNAMKONAM P.O.,**
**THIRUVANANTHAPURAM 695 125.**

**BY ADV. SRI.B.RAGUNATHAN**
**SRI.V.V.MATHEW**
**SRI.G.GOPALAKRISHNA PILLAI**

**RESPONDENTS:**
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1. **DIRECTOR OF PUBLIC INSTRUCTION, JAGATHY,**
   **THIRUVANANTHAPURAM 693 014.**

2. **DISTRICT EDUCATIONAL OFFICER,**
   **NEYYATTINKARA, THIRUVANANTHAPURAM 695 121.**

3. **ASSISTANT EDUCATIONAL OFFICER,**
   **KATTAKKADA, THIRUVANANTHAPURAM 695 578.**

4. **MANAGER , GNANODAYAM L.P.S, MANNAMKONAM,**
   **MANNAMKONAM P.O., THIRUVANANTHAPURAM 695 125.**

5. **SMT.V.KUMARY, L.P.S.A, GNANODAYAM L.P.S MANNAMKONAM**
   **MANNAMKONAM P.O., THIRUVANANTHAPURAM 695 125.**

**OP. NO.21646/1999**

**6. STATE OF KERALA, REP.BY THE SECRETARY TO GOVERNMENT , GENERAL EDUCATION DEPARTMENT, GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM 695 001.**

**BY ADV. SRI.P.G.RAJAGOPALAN**
**SRI.M.GOPIKRISHNAN NAMBIAR**
**SRI.SHIRAZ ABDULLA**
**SRI.T.P.KELU NAMBIAR (SR.)**
**SRI.PIRAPPANCODE V.SREEDHARAN NAIR**
**SRI.S.P.ARAVINDAKSHAN PILLAY**
**SRI.PIRAPPANCODE V.S.SUDHIR**
**BY GOVERNMENT PLEADER SMT.SMITHA SUKUMAR**

**THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 12/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

**ORDER ON CMP. NO.35683/1999 IN OP. NO.21646/1999**

**DISMISSED**

**12.07.2007 SD/- THOTTATHIL B.RADHAKRISHNAN, JUDGE**

**APPENDIX**

**PETITIONER'S EXHIBITS**

**EXT.P1:- COPY OF THE LETTER NO.C/2651/98 DT.30.11.98 OF THE 3RD RESPONDENT.**

**EXT.P2:- COPY OF THE JUDGMENT DT. 19.12.1998 IN OP. NO.25463/98 OF THIS HONOURABLE COURT.**

**EXT.P3:- COPY OF THE COPY OF THE ORDER NO.B6-12107/98 .DT.4.3.99 OF THE 2ND RESPONDENT.**

**EXT.P4:- COPY OF THE REVISION PETITION DT. 20.3.99 TO THE 1ST RESPONDENT.**

**EXT.P5:- COPY OF THE ORDER NO.F1-26967/99/DPI DT. 30.6.99 OF THE IST RESPONDENT.**

**EXT.P6:- COPY OF THE ORDER NO.ET1/41499/99/DPI DT. 6.7.99 OF THE 1ST RESPONDENT.**

**/TRUE COPY/**

**P.A. TO JUDGE**

**tss**

**THOTTATHIL B.RADHAKRISHNAN, J.**

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O.P.No.21646 OF 1999

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Dated this the 12th day of July, 2007

**JUDGMENT**

The 5th respondent was appointed as the Headmistress of a school. She is admittedly senior to the petitioner. However, she had not cleared the obligatory departmental test in terms of Rule 44 A in Chapter XIV A, K.E.R. for appointment as Headmaster. The petitioner had such qualification. The 5th respondent appeared for such a test on 6.1.1998, that being the last date of the examination conducted by the Public Service Commission. Results were declared on 13.5.1998 by the PSC and published in the gazette on 6.10.1998. The vacancy against which the 5th respondent has been appointed arose on 1.4.1998, i.e., after the 5th respondent wrote the examination, but before the results were declared on 13.5.1998. The Note occurring after Sub Rule 1 of Rule 44 B in Chapter XIV A provides that the benefit of increment on passing the obligatory departmental test will be given from the last date of the qualifying examination. That Note also makes the last date of the qualifying examination to be

applicable for promotion to posts not involving change of duties. Therefore, having passed the examination, the last date of qualifying examination being 6.1.1998, the 5th respondent would be eligible for the benefit of the aforesaid Note, provided, such benefit is not being applied in relation to granting promotion to posts not involving change of duties. Rule 11 in Chapter IX K.E.R. enumerates the Headmaster's duties. A perusal of that Rule will show that the duties of a Headmaster are not the same as the duties of teachers as laid down in Rule 12 of Chapter IX. Therefore, a promotion from the post of teacher to that of Headmaster is a promotion involving change of duties. If that be so, a promotion cannot be effected from the post of teacher to Headmaster by relying on the Note to Rule 44 B in Chapter XIV A. Therefore, the impugned orders granting approval of the appointment of the 5th respondent as Headmistress in preference to the petitioner is illegal, being contrary to the Rules. The effect of the Note to Rule 44 B in Chapter XIV A K.E.R. is akin to that of Rule 28 bbb of Part II K.S. & S.S.R.

In the result, this writ petition is allowed quashing Exts.P1, P3 and P5 and declaring that the petitioner is entitled to be appointed as Headmistress of the school with effect from 1.4.1998 and such appointment is entitled to be approved by the statutory authorities with all necessary consequences in accordance with law. No costs.

Sd/-

**THOTTATHIL B.RADHAKRISHNAN,**
**Judge**

kkb.

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THOTTATHIL B. RADHAKRISHNAN, J

O.P.NO.21646 OF 1999

JUDGMENT

12TH JULY, 2007.

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